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17
18 Counsel for Bank of America, N.A.,
19 as Trustee for the Registered
20 Certificate Holders of Bear Stearns
21 Commercial Mortgage Securities,
22 Inc., Commercial Mortgage Pass-
23 Through Certificates, Series 2007-
24 Pwr16
25

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27
28
29 IN THE UNITED STATES BANKRUPTCY COURT
30 FOR THE EASTERN DISTRICT OF VIRGINIA
31 RICHMOND DIVISION
32

33 In re:

34
35 CIRCUIT CITY STORES, INC., et al.,
36
37 Debtors.
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Case No. 08-35653-KRH

REPLY TO LIQUIDATING TRUST'S
FORTY-FIRST OMNIBUS OBJECTION TO
LANDLORD CLAIMS

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44 BANK OF AMERICA, NATIONAL ASSOCIATION, AS SUCCESSOR BY
45 MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
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REPLY TO LIQUIDATING TRUST'S
FORTY-FIRST OMNIBUS OBJECTION TO
LANDLORD CLAIMS – 1

38935-0052/LEGAL23989965.2

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1 REGISTERED CERTIFICATE HOLDERS OF BEAR STEARNS COMMERCIAL
2 MORTGAGE SECURITIES, INC., COMMERCIAL MORTGAGE PASS-THROUGH
3 CERTIFICATES, SERIES 2007-PWR16 (“Creditor”), by and through undersigned counsel,
4
5 hereby responds to the Objection [docket 11852] to its claim (originally filed in the name of
6
7 Meridian Village, LLC) filed by Alfred H. Siegel, as trustee (the “Trustee”) on behalf of the
8
9 Circuit City Stores, Inc. Liquidating Trust (the “Liquidating Trust”).
10
11

12 Meridian Point Realty Trust VI, Co. d/b/a Meridian Village, LLC (“Meridian”) was
13
14 the former owner of a shopping center located at 3944 Meridian Street, Bellingham,
15
16 Washington 98226 (the “Property”). Meridian was landlord under a lease (the “Circuit City
17
18 Lease”) for certain space at the Property (the “Circuit City Premises”) with Circuit City
19
20 Stores, Inc. (the “Debtor”) as lessee. Creditor was a lender to Meridian and held a first
21
22 position deed of trust on the Property. Upon Meridian’s default, Lender foreclosed on its
23
24 deed of trust and became owner of the Property pursuant to a credit bid at a trustee sale held
25
26 on March 26, 2010, and thereby became owner of Meridian’s claim in this case for lost rents
27
28 under the rejected Circuit City Lease. Lender has separately filed a notice of transfer of
29
30 Claim No. 11775 from Meridian to Lender.
31

32 The Debtor vacated the Property in February of 2009 and rejected the Circuit City
33
34 Lease effective March 4, 2009. Meridian moved expeditiously to re-lease the Property and
35
36 mitigate damages. Meridian and, after foreclosure, Lender both engaged SUHRCO
37
38 Management, Inc. (“SUHRCO”) as property manager and CBRE as leasing agent for the
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40 Property. SUHRCO was continuously engaged as property manager for the Property from
41
42 October 2003 through April 24, 2012. CBRE began immediate efforts to re-let the Circuit
43
44 City Premises after the Circuit City Lease was rejected. As a result of CBRE’s efforts, a
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1 new lease dated July 8, 2009 (the "Replacement Lease")¹ was signed between Meridian
2 Village, LLC and DeWaard & Bode Inc. ("DeWaard & Bode").
3

4 Meridian filed its proof its claim (assigned Claim No. 11775) for rejection damages
5 in the amount of \$243,466.32, representing the statutory cap under 11 U.S.C. § 502(b)(6) of
6
7 12 months' rent. Even after its mitigation efforts that resulted in the Replacement Lease,
8
9 Creditor and its predecessor in interest Meridian suffered mitigated rejection damages in
10
11 excess of \$243,466.32, consisting of three primary parts:
12
13

14 1. Lost Rent and CAM. DeWaard & Bode did not begin paying rent under the
15 Replacement Lease until October 2009, seven (7) months after the Rejection Date.
16
17 Therefore, Meridian was damaged by seven (7) months of missed rent, CAM, and insurance
18
19 payments of \$20,288.86 per month, totaling \$142,022.02.
20
21

22 2. Difference in Rent. When the Replacement Tennant starting paying rent in
23 October 2009, it was one of 64 monthly rental payments due prior to the January 2015
24
25 expiration date of the Circuit City Lease. Taking into account the 5-year adjustment for
26
27 base rent to go into effect January 2010 under the Circuit City Lease, the sum of the base
28
29 rent due under the Circuit Lease from October 2009 for the remainder of its term through
30
31 January, 2015 was \$1,253,622.87. The Replacement Lease provides for total base rent
32
33 payments of \$1,092,390.06 during this same period. Therefore, the Landlord is entitled to
34
35 the difference between the two leases for the remaining period under the Circuit City Lease,
36
37 which amounts to \$161,232.81.²
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46 ¹ A true and correct copy of the Replacement Lease is attached hereto as Exhibit A.

47 ² The calculation of this amount is attached hereto as Exhibit B.

1 3. Leasing Commissions. Finally, Meridian incurred and paid leasing
2
3 commissions of \$44,832.46 in conjunction with obtaining the Replacement Lease. These
4
5 commissions were an actual cost of mitigating damages.

6
7 The forgoing adequately shows that Meridian (Lender's processor in interest) took
8
9 various measures to re-let the Circuit City Premises and to mitigate damages it incurred as a
10
11 result of the Debtor's rejection of the Circuit City Lease. Therefore, Claim No. 11775 for
12
13 the damages from rejection of the Circuit City Lease should be allowed in the full filed
14
15 amount of \$243,433.32, and the Objection should be overruled with respect to Claim
16
17 No. 11775.

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21 DATED: June 26, 2012

PERKINS COIE LLP

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23
24 By: /s/ John K. Roche
25 John K. Roche, VSB# 68594

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